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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5199 of 2004
WITH
SPECIAL CIVIL APPLICATION No 5200 of 2004
WITH
SPECIAL CIVIL APPLICATION No 5201 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

KANTILAL BABALDAS PATEL

Appearance:

1. Special Civil Application No. 5199 of 2004
MR HARDIK C RAWAL for Petitioner No. 1
MR RC JANI for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 05/05/2004

ORAL JUDGEMENT

Mr. Rawal, learned advocate for the petitioner states that the notice issued by this Court on 27.04.2004 for final disposal is duly served on the concerned

respondent, but nobody appears on behalf of the respondents.

2. Upon hearing Mr. Rawal for the petitioner, it appears that the present case is more or less on the same grounds and on the same points as they were considered by this Court in Special Civil Application No. 8080 of 2003 and allied matters, which have been disposed of as per decision dated 11.02.2004. Not only that, but after considering the same subject matter in another petition, viz. Spl. C.A. No. 1528 of 2004, where also the respondent employee did not appear inspite of service, this Court, as per its decision dated 17.04.2004, has considered and found that if the respondent concerned declares before the appellate authority under the Payment of Gratuity Act to the effect that he is not claiming interest on the ordered amount of gratuity, then in that case, the respondent concerned may be permitted to withdraw the amount by the appellate authority without further adjudicating the matter, but if the concerned respondent fails to make such a declaration within a reasonable time, then the appellate authority will have to reconsider the whole case in light of the decision delivered by this Court on 11.02.2004 in Spl. C.A. No. 8080 of 2003 and allied matters. Hence, Rule.

3. Under the above circumstances, since the present case is squarely covered by the decision delivered by this Court on 17.04.2004 in Special Civil Application No. 1528 of 2004, in view of the reasons recorded therein, the present petitions also deserve to be allowed, and the following directions are required to be issued as they were issued in the aforesaid matter.

3.1 The impugned orders dated 30.6.2003, 09.07.2003 and 17.07.2003 respectively passed by the Controlling Authority and orders in concerned appeal dated 26.2.2004 passed by the Appellate Authority are quashed and set aside with a further direction that since the amount of gratuity with interest is already deposited by the petitioner with the appellate authority, if the concerned respondent files a declaration on oath before the Appellate Authority declaring that he is abandoning the right to claim interest, then in that case, the Appellate Authority shall allow the withdrawal of the principal amount of gratuity to the respondent herein and shall refund the amount of interest to the petitioner-Corporation.

3.2 If the concerned respondent fails to file such a declaration as observed earlier, then the appellate

authority shall re-hear appeal No. 69 of 2003, 70 of 2003 and 73 of 2003 respectively and shall decide the same in light of the observations made by this Court in the judgment dated 11.2.2004 in Special Civil Application No. 8080 of 2003 and allied matters and shall render the decision in accordance with law as early as possible, preferably within a period of four months from the date of receipt of the writ of this Court.

4. The petition is allowed to the aforesaid extent. Rule made absolute accordingly. Considering the facts and circumstances of the case, no order as to costs.

[JAYANT PATEL, J.]

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